

NORTH DAKOTA
DEPARTMENT OF ENVIRONMENTAL QUALITY
Departmental Memorandum

TO: File
Otter Tail Power Company, LLC – Coyote Station
Mercer County

FROM: Craig Thorstenson
Division of Air Quality
Environmental Engineer

RE: Comments on Proposed Renewal of Permit to Operate No. T5-F84011 for the Otter Tail Power Company – Coyote Station

DATE: _____

On June 14, 2018, the Department¹ issued notice that it was holding a 30-day public comment period (June 22, 2018-July 21, 2018) on its proposal to issue a renewal Air Pollution Control Permit to Operate to Otter Tail Power Company for the operation of the Coyote Station. As required by N.D. Admin. Code § 33.1-15-14-06(6)(a)(4), the Department also issued a draft Statement of Basis explaining the basis for issuing the renewal. The only comments received were submitted by Mr. JJ England on behalf of Casey and Julie Voigt (the “Voigts”). Ottertail Power Company and Coyote Creek Mining Company, L.L.C., each submitted responses to the Voigts’ comments.

The Voigts’ comments argue that the proposed renewal is incomplete because it does not include emissions from Coyote Creek Mine (CCM), a lignite coal mine supplying coal to Coyote Station. Specifically, the Voigts contend that the Department’s 2013 separate source determination was based on false information and the Department should instead consider the CCM and Coyote Station as one source for air permitting purposes. According to the Voigts, the Coyote Station’s Title V permit must therefore be modified to include the CCM’s operations. The Voigts further contend that construction of the CCM triggered prevention of significant deterioration (PSD) review of the combined source.

The Department previously concluded that the CCM and Coyote Station are not considered one source in its 2013 separate source determination letter issued to the CCM. And, in January 2015,

¹ On April 29, 2019, the Department of Environmental Quality went into effect and assumed authority for the environmental protection programs that had previously been under the former Department of Health Environmental Health Section’s authority. *See* 2017 N.D. Sess. Laws ch. 199, § 1. The air pollution control statutes have moved from N.D.C.C. ch. 23-25 to 23.1-06, and the rules have moved from N.D. Admin. Code art. 33-15 to 33.1-15. The draft permit has been revised accordingly. The term “Department” refers to both agencies, as appropriate.

the Department issued a preconstruction air permit to the CCM based on its determination that the CCM was a source separate from Coyote Station. The Voigts' comments seek to have the Department reconsider these decisions.

EPA has recently addressed whether such previous preconstruction permitting decisions should be reviewed in the context of title V permitting. The Department agrees with and adopts EPA's reasoning articulated in *In the Matter of PacificCorp Energy Hunter Power Plant, Emery County, Utah*, Order on Pet. No. VIII-2016-4 (October 16, 2017) ("*PacificCorp*"). There, EPA stated that "the title V permitting process is not the appropriate forum to review [] preconstruction permitting decisions." *Id.* at 8. Notably, title V permits simply consolidate applicable requirements into a single document and are "not intended to add new substantive requirements." *Id.* at 14.

Thus, the Voigts' comments are not relevant here and the Department will not consider them.

Moreover, even if the Voigts' comments were relevant, the Department has recently re-evaluated and reconfirmed its 2013 single source determination. Since additional information is available regarding the actual construction and operation of the CCM, the Department's reasoning has evolved but the outcome remains the same – the CCM and Coyote Station are separate sources for the purposes of the applicable air quality permitting requirements; therefore, PSD review is not required for the CCM. See attached source determination memorandum for details.

Based upon the above, no changes have been made to the draft renewal title V permit for the Coyote Station or Statement of Basis in response to the July 21, 2018 comments. Since all comments received during the public comment period have now been addressed, the Department will proceed with a 45-day EPA review period regarding issuance of the Coyote Station Permit to Operate No. T5-F84011.

Attach: Stationary Source Determination Memorandum